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Supreme Court of the United States,

OCTOBER TERM, 1902.

Office Supreme Court U. S.
FILED
FEB 28 1903
JAMES H. McKENNEY,
Clerk.

AUGUST CLIFF,
Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,
Defendant in Error.

No. 634. 221

Error to the District Court for the Northern District of Illinois, Northern Division.

FREDERICK J. SCHICK,
Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,
Defendant in Error.

No. 635. 222

Error to the District Court for the Northern District of Illinois, Northern Division.

WILLIAM BROADWELL,
Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,
Defendant in Error.

No. 636. 223

Error to the District Court for the Northern District of Illinois, Northern Division.

MOTION TO UNITE CASES AND ADVANCE FOR HEARING UNDER RULE 20.

WILLIAM D. GUTHRIE,
FRANCIS J. KEARFUL,
CHARLES C. CARNAHAN,
DELAVAN B. COLE,
of counsel for plaintiff in error in each case.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

AUGUST CLIFF, *Plaintiff in Error,* vs. UNITED STATES OF AMERICA, *Defendant in Error.*	No. 614. Error to the District Court for the Northern District of Illinois, Northern Division.
FREDERICK J. SCHICK, *Plaintiff in Error,* vs. UNITED STATES OF AMERICA, *Defendant in Error.*	No. 615. Error to the District Court for the Northern District of Illinois, Northern Division.
WILLIAM BROADWELL, *Plaintiff in Error,* vs. UNITED STATES OF AMERICA, *Defendant in Error.*	No. 616. Error to the District Court for the Northern District of Illinois, Northern Division.

NOTICE OF MOTION TO UNITE CASES AND ADVANCE FOR HEARING UNDER RULE 26.

Notice is hereby given that the annexed motion to unite the above entitled cases for hearing and to advance the same upon the docket, under

sections 3, 5, 6, 7 and 8 of rule 26, will be presented, upon the records in said cases, to the Supreme Court of the United States, at the Capitol, in the City of Washington, on Monday, the 2nd day of March, 1903, at the coming in of the court on that day, or as soon thereafter as counsel can be heard.

WASHINGTON, D. C., February 24, 1903.

WILLIAM D. GUTHRIE,
FRANCIS J. KEARFUL,
CHARLES C. CARNAHAN,
DELAVAN B. COLE,
of counsel for plaintiff in error in each case.

To PHILANDER C. KNOX,
Attorney General.

Due and timely service of the above motion is hereby admitted.

Attorney General.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1902.

AUGUST CLIFF, *Plaintiff in Error,* *vs.* UNITED STATES OF AMERICA, *Defendant in Error.*	No. 614. Error to the District Court for the Northern District of Illinois, Northern Division.
FREDERICK J. SCHICK, *Plaintiff in Error,* *vs.* UNITED STATES OF AMERICA, *Defendant in Error.*	No. 615. Error to the District Court for the Northern District of Illinois, Northern Division.
WILLIAM BROADWELL, *Plaintiff in Error,* *vs.* UNITED STATES OF AMERICA, *Defendant in Error.*	No. 616. Error to the District Court for the Northern District of Illinois, Northern Division.

MOTION TO UNITE CASES AND ADVANCE FOR HEARING UNDER RULE 26.

Upon the records in the above entitled cases, the plaintiff in error in each case moves that said cases be heard together and advanced upon the docket of

the court, and respectfully submits the following reasons why the motion should be granted, viz.:

I.

Each of these cases, to a certain extent, involves the same question, namely, the constitutionality of the act of Congress of August 2, 1886, relating to butter and oleomargarine, as amended by the act of Congress of May 9, 1902, and, therefore, "may, by leave of court, be heard together" and "argued as one case," in accordance with section 8 of rule 26.

The record in each case shows that the constitutionality of certain portions of this law of the United States is drawn in question and that the grounds upon which it is assailed are substantially similar in each case.

II.

Each of these cases is a criminal case, and, therefore, "may be advanced by leave of court on motion of either party," in accordance with section 3 of rule 26.

The record in each case shows that the defendant was prosecuted by information under Section 11 of the Act of Congress of August 2, 1886, relating to butter and oleomargarine, as amended by the Act of Congress of May 9, 1902, and, in each case, was found guilty and adjudged to pay to the United States a penalty of fifty dollars and costs.

III.

Each of these cases is a revenue case in which the United States is very largely concerned, and also involves and affects matters of general public interest, and, therefore, "may also by leave of court be advanced on motion of the attorney-general," in accordance with Section 3 of Rule 26.

The record in each case shows that the defendant assails the constitutionality of the act of Congress of August 2, 1886, relating to butter and oleomarga-

cise, as amended by the act of Congress of May 8, 1902, which act imposes a tax of ten cents per pound upon oleomargarine containing "artificial coloration which causes it to look like butter," and authorizes the Commissioner of Internal Revenue

tax law, to reduce the revenues of the Unites States government at the rate of more than $1,000,000 per annum.

Upon these facts, the plaintiff in error in each case contended in the court below, and now in his assignments of error shows, that the provisions of the act in question deprive him and the oleomargarine manufacturers and dealers in the United States of their liberty and property without due process of law, constitute an unlawful encroachment upon the police powers reserved to the several states and to the people of the United States, vest in an inferior administrative officer final and arbitrary power to determine an essentially judicial question, and is repugnant to the fundamental principles of equality and justice inherent in the Constitution of the United States.

The court below evidently was impressed with the fact that these cases involved matters of general public interest. Had the position of the plaintiffs in error been sustained, the cases, being criminal, could not have come to this court. Consequently, their contention in each case was overruled, with the observation that the case presented questions so peculiarly for the Supreme Court as to call for its decision thereon, and that, though the questions presented were well worthy of consideration, the statute was not so clearly unconstitutional as to warrant a lower federal court, in such a case, in so holding it.

During the past twenty years this court has been so many times called upon to consider legislation affecting the rights of oleomargarine producers and dealers in the United States that it would seem to be unnecessary to call attention to the extent and importance of the oleomargarine industry, and it needs no argument to establish the proposition that a case involving the power of Congress to destroy that industry, without compensation and for purposes other than public purposes, involves matters of general public interest. One instance shown by

the record is that of the Wm. J. Moxley factory in Chicago, which, with a capacity of over 3,000,000 pounds per month, produced and sold during the last year under the old law about 2,600,000 pounds per month, upon which the tax of 2 cents per pound was paid, and, during the first six months under the new law, produced and sold only about 37,594 pounds for the entire period, upon which the tax of 10 cents per pound was paid. The reason for this ruinous decrease was shown to be that the addition of eight cents per pound to the cost of production prevented oleomargarine from competing with butter. This is illustrated by the instance of the witness Amundsen, a retail dealer, who supplied the laboring classes in Chicago with oleomargarine under the old law. His customers "knew that it was oleomargarine and not butter, and they bought it because it was cheaper than butter." But when the 10 cent tax was paid it was cheaper to buy butter, and they would not have the uncolored article. As a consequence, to use his own expression, "every customer I had quit." The truth of these instances, among many, is unchallenged, and they are cited to show that the position of the plaintiffs in error is based upon established facts. When, therefore, it is considered that the object of this act of Congress, as demonstrated by the undisputed and indisputable evidence of its operation, is to suppress the production and sale of oleomargarine as a cheap, wholesome and satisfactory substitute for butter, the conclusion that the public interest is very seriously affected is believed to be unavoidable.

Moreover, aside from the individual liberty and property rights directly involved, the general public must needs be deeply interested in maintaining a just competition between oleomargarine and butter, and in maintaining the opportunity of the poorer classes who cannot afford to purchase high priced butter to obtain a cheap, wholesome and satisfactory substitute therefor. Again, the people of every state have enacted laws regulating the

manufacture and sale of oleomargarine, and, undoubtedly there is a general public interest in the question whether such enactments are within the powers committed to Congress or whether they are within the powers reserved to the states respectively or to the people.

IV.

The plaintiff in error in each case therefore prays that said cases may be heard together and advanced for argument as one case to as early a day as may be convenient for the Court.

Notice of this motion has been served on the Attorney General of the United States.

WASHINGTON, March 2, 1903.

WILLIAM D. GUTHRIE,
FRANCIS J. KEARFUL,
CHARLES C. CARNAHAN,
DELAVAN B. COLE,
of counsel for plaintiff in error in each case.